



Docket No.: A6605.0005
(PATENT)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Charles F. Schroer, Jr.

Application No.: 10/612,601

Confirmation No.: 4815

Filed: July 1, 2003

Art Unit: 3761

For: DIAPER DESIGN HAVING ZONES OF
REDUCED STIFFNESS AND
CONTINUOUS BREATHABILITY

Examiner: K. M. Reichle

APPELLANTS' REPLY BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is pursuant to 37 CFR § 41.41(a), and is responsive to the Examiner's Answer mailed on August 28, 2006, in connection with the Appeal from the final rejection of claims 1-48 mailed February 3, 2006, in the above identified U.S. Patent application. As required under § 41.41(a), this Reply Brief is filed within two months of the Examiner's Answer.

No fees are believed due for the filing of this Reply Brief. However, if any fee is due, the Patent Office is authorized to charge such fee to Deposit Account No. 50 2215.

As described in Appellants' Appeal Brief, each of the claims under final rejection is patentable over the references cited by the Examiner. Appellant maintains each argument presented in the Brief.

In the Examiner's Answer, the Examiner presented several arguments in rebuttal of the positions taken in the Appeal Brief. Several of these rebuttal points are inaccurate and/or misleading and will be addressed below.

In Section 10 A. of the Examiner's Answer, the Examiner discusses Appellants' remarks on beginning on page 8 of the Appeal Brief. The Examiner misclassifies Appellants' statements by arguing that certain features discussed in Appellants' Brief are not required by the claims. This is inaccurate and misleading.

As set forth in Appellants' Appeal Brief, independent claim 32 requires "breathable zones of reduced stiffness" that result in a better fitting and less irritating absorbent article. The portion of Appellants' Appeal Brief cited by the Examiner was included to aid in an understanding of the advantages of the claimed structure over the prior art.

In addition, the Examiner stated that "[f]urthermore, the barrier layer is only required to not be present where the leg elastic members are located which does not necessarily encompass the entire area surrounding the thighs." This statement is incorrect. In particular, independent claims 1, 17 and 32 require that "the barrier cuffs and the backsheet extend past [the] lateral edges of the barrier layer and terminate at the lateral side edges of the absorbent article," which limitation is not taught or suggested in the references of record. This limitation further defines where the barrier

cuffs and backsheet are and are not located. The Examiner's statement in her Answer ignores this expressly recited limitation.

In Section 10 B.1. of the Examiner's Answer, the Examiner states that Appellants' arguments set forth on pages 9-11 are "not persuasive because they are narrower than the rejection." Appellant respectfully disagrees. In this argument Appellants addressed the Examiner's statements contained in the Advisory Action mailed February 23, 2006, as well as the rejection set forth on page 5 of the October 4, 2005 Final Office Action. In the Final Office Action the Examiner specifically admitted that Saisaka teaches that the barrier cuffs are turned inward. Appellant responded to this admission in the Final Office Action with a teaching away argument. In the Advisory Action, the Examiner dismissed Appellants' teaching away argument by concluding that, since Saisaka does not disclose that this inward turning is critical, it is obvious to turn the barrier cuffs outward. It is clearly incorrect for the Examiner to now claim that Appellants' arguments are narrower than the rejection at issue when the exact language quoted was from an Advisory Action as well as from the Final Office Action.

In Section 10 B.2. of the Examiner's Answer, the Examiner contends that Appellants' arguments do not point out specifically why such outward turning would cause an eradication of the stretchability of the side liner portions of Saisaka. This, however, is entirely inaccurate.

Appellants have specifically addressed this contention and provided at least one reason why there would be such an eradication of stretchability of the absorbent article of Saisaka if modified as suggested by the Examiner in both the February 3, 2006

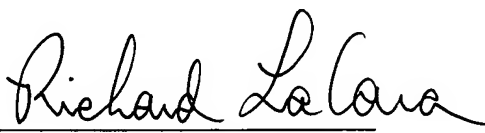
Amendment After Final as well as the Appeal Brief. Specifically, Appellants' Brief at page 13 described that the barrier cuff material of the prior art is not stretchable and liquid impermeable. If this non-stretchable barrier cuff material were to cover the stretchable side liner portions of Saisaka, those side liner portions would no longer be stretchable. As such, it is respectfully submitted that any modification to the teachings of Saisaka et al. to turn the barrier cuffs outward would render the resultant absorbent article unsatisfactory for the intended purpose of providing stretchable side liner portions.

The other specific arguments relating to the patentability of the claims set forth in the Appeal Brief are maintained.

For at least the reasons set forth above, and those identified in the Appeal Brief, Appellants respectfully submit that the Final Office Action and the Examiner's Answer fails to even state a *prima facie* case under Section 103. Accordingly, reversal of the final rejection of claims 1-48 is respectfully requested.

Dated: October 11, 2006

Respectfully submitted,

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